

Alan B. Yuter (SBN CA 101534)  
Rachel E. Hobbs (SBN CA 186424)  
rhobbs@selmanlaw.com  
SELMAN BREITMAN LLP  
11766 Wilshire Blvd., Sixth Floor  
Los Angeles, CA 90025-6546  
Telephone: 310.445.0800  
Facsimile: 310.473.2525

Attorneys for Plaintiff  
FLORISTS' MUTUAL INSURANCE COMPANY

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA – SAN JOSE DIVISION

FLORISTS' MUTUAL INSURANCE  
COMPANY,

Plaintiff,

v.

FLORICULTURA PACIFIC, INC.,

Defendant.

Case No.

COMPLAINT FOR DECLARATORY  
RELIEF

Plaintiff Florists' Mutual Insurance Company, by and through its attorneys, hereby  
alleges as follows:

**I. GENERAL ALLEGATIONS**

**A. Jurisdiction**

1. Florists' Mutual Insurance Company ("Florists' Mutual") is an Illinois  
corporation that is authorized to and does transact business in California.

2. Florists' Mutual is informed and believes, and thereupon alleges, they are  
Floricultura Pacific, Inc. ("Floricultura"), the named insured under its policy described below, is  
a corporation with its principal place of business in Salinas, California.

3. There is an actual controversy described herein under 28 USC §2201(a),  
concerning whether and to what extent there is coverage for the April 29, 2018 loss to

1 Floricultura's orchid crop at 25425 Esperanza Road, Salinas, California ("Subject Loss").

2 4. Jurisdiction is proper in this Court pursuant to 28 USC §1332 because the  
3 amounts in controversy under the Florists' Mutual policy exceed \$75,000 exclusive of interest  
4 and costs, and there is complete diversity among the parties as alleged herein.

5 5. Venue is proper in this judicial district pursuant to 28 USC §1391 in that a  
6 substantial part of the events or omissions giving rise to this claim occurred within the Northern  
7 District of California. Specifically, events giving rise to the action occurred in the County of  
8 Monterey, California, and all parties are authorized to conduct business in California. Venue is  
9 therefore proper pursuant to 28 USC §1391(b) and 28 USC §1391(c).

10 **B. The Florists' Mutual Policy**

11 6. Florists' Mutual Insurance Company issued Business Package Policy No. BP-  
12 15561 to Floricultura Pacific Inc., effective July 14, 2017 to July 14, 2018 (hereinafter,  
13 "Policy").

14 7. The Policy's **COMMERCIAL PROPERTY COVERAGE PART**  
15 **SUPPLEMENTAL DECLARATIONS, BPP—SECTION I** states, in pertinent part:

16 **REAL AND BUSINESS PERSONAL PROPERTY**

17 LOC 1	25425 Esperanza Road, Salinas, CA 93908
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18 \*\*\*

19 **BUSINESS PERSONAL PROPERTY**

20 Building or Greenhouse / Type of Property	Deductible	CoIns % Valuation	Causes of Loss	Limit	Extension
21 601-621, A-F – 22 Business Personal Property	100,000	90%/RC	Special	[X] 9,042,837	PP – 2,260,709

23 \*\*\*

24 **HortAdvantage Plus Property Package**  
25 **Schedule of Coverage**

26 \*\*\*

27 **Section B. HORTICULTURAL:**

Coverage	Limit of Insurance	Deductible
28 B.1. Container Grown Plants	Included in Business Personal	\$100,000

	Property Limit (per location)	
***		
B.7. Loss of Heating or Cooling	\$5,000	\$250
***		

\*\*\*

**Section G. SUPPLEMENTAL:**Coverage

Coverage	Limit of Insurance	Deductible
***		
G.13. Utility Services – Direct Damage	\$25,000	\$250

\*\*\*

**BUSINESS INCOME (AND EXTRA EXPENSE)****SCHEDULE OF COVERAGE**

Your total Business Income, Extra Expense and Rental Value Limit is the Actual Loss Sustained.

**HortAdvantage Business Income Enhancements:**Coverage:

\*\*\*

9. Utility Services – Time Element	<u>Limit of Insurance</u>
	\$25,000

\*\*\*

8. The Policy's **COMMERCIAL PROPERTY COVERAGE PART, SUPPLEMENTAL DECLARATIONS, BPP—Section I, Coverage H13, Equipment Breakdown – Boiler and Machinery, SCHEDULE OF COVERAGE** states, in pertinent part:

\*\*\*

\*\*\*

Business Income/Extra Expense Limit:  
Follows BI/EE Form and Limits

Business Income/Extra Expense Deductible:  
12 Hours

**COVERAGE EXTENSIONS**

\*\*\*

**LOCATION 1**

Spoilage Coverage	<u>\$250,000</u>
Spoilage Coverage Deductible	<u>\$100,000</u>

9. The Policy also utilized coverage form **BP-BI 09-16 – BUSINESS INCOME (AND EXTRA EXPENSE) COVERAGE FORM**, which states, in pertinent part, as follows:

\* \* \*

**A. Coverage**

We will pay up to the Business Income Limit of Insurance as shown on the Declarations for the actual loss of Business Income you sustain and the actual, necessary and reasonable Extra Expense you incur due to the necessary “suspension” of your “operations” during the “period of restoration.” This “suspension” must be due to direct physical loss of or direct physical damage caused by or resulting from a Covered Cause of Loss to Covered Property located at the described premises.

\*\*\*

**C. Covered Causes of Loss, Exclusions And Limitations**

See applicable Causes of Loss form as shown in the Declarations.

\*\*\*

**G. Definitions**

1. **Completion** means when “horticultural stock” has attained its planned growth cycle goal.
2. **Operations** means:
  - a. Your business activities occurring at the described premises; and
  - b. The tenantability of the described premises.
3. **Period of Restoration** means the period of time that:
 

Begins immediately after the time of direct physical loss or damage for Business Income Coverage or Extra Expense Coverage caused by or

1 resulting from any Covered Cause of Loss at the described premises  
2 and ends on the earlier of:

3 a. The date when the property at the described premises should be  
4 repaired, rebuilt or replaced with reasonable speed and similar  
5 quality; or

6 b. The date when business is resumed at a new permanent  
7 location....

8 \*\*\*

9  
10 The expiration date of this policy will not cut short the "period of  
11 restoration".

12 \*\*\*

13 **5. Suspension means:**

14 a. the slowdown or cessation of your business activities; or

15 b. the partial or total untenability of the described premises.

16  
17 10. The Policy contains endorsement **BP-ALS 09-16, Business Income—**  
18 **Actual Loss Sustained**, which provides in pertinent part:

19 **A. Limits of Insurance**

20 Form **BP-BI**, Paragraph **B** Limits of Insurance is deleted in its entirety and  
21 replaced with the following:

22 The most we will pay for loss in any one occurrence is the applicable Limit of  
23 Insurance shown in the Declarations.

24 **1. Actual Loss Sustained**

25 Subject to the "Period of Restoration", we will pay the actual loss of  
26 Business Income you sustain and Extra Expense you incur that occurs  
27 within 12 consecutive months following the date of direct physical loss or  
28

damage occurring at the described premises shown on the Declarations, except as modified below in A.2.

\*\*\*

**E. Revised Definition:**

As used in this endorsement, paragraph **b.** of form **BP-BI**'s definition of "period of restoration" is deleted and replaced as follows:

b. Ends on the earlier of:

(1) The date when the property at the described premises should be repaired, rebuilt, or replaced with reasonable speed and similar quality;

(2) The date when business is resumed at a new permanent location; or

(3) The anniversary date that ends a 12 consecutive month period after the date on which the direct physical loss of or damage to property occurred at the described premises which caused the "suspension" of your "operations".

11. The Policy contains Endorsement BP-BIE 09-16, **HortAdvantage Business Income Enhancement**, which provides:

This endorsement modifies insurance provided under the **BP-BI** and **BP-I**.

Except as otherwise stated in this endorsement, the terms and conditions of the policy apply to the insurance stated below.

**INTRODUCTION**

The Coverage Provisions included in this endorsement are provided when an appropriate entry is made on the Declarations. These Coverage Provisions are additional insurance when the Business Income and Extra Expense Coverage form is endorsed to the policy.

Words and phrases that appear in quotation marks have special meaning; please refer to Section G. Definitions located in form BP-BI and Part IV. Definitions located in form BP-I.

\* \* \*

## **9. Utility Services – Time Element Coverage**

### **a. Coverage:**

We will extend the insurance that applies to Business Income and Extra Expense to apply to a “suspension” of “operations” at the described premises during the “period of restoration” caused by an interruption in utility service(s) to those premises.

### **b. Limit of Insurance:**

The most we will pay under this Coverage Provision for all loss sustained and expense incurred resulting from direct physical loss or damage by a Covered Cause of Loss is the Utility Services –Time Element Coverage Limit of Insurance as shown on the Declarations.

### **c. Utility Services:**

As used in this Additional Coverage, Utility Service(s) means:

\*\*\*

**(4) Power Supply Services**, meaning the following types of property supplying electricity, steam or gas to the described premises:

\*\*\*

**(e) Transmission lines**

12. The Policy utilized coverage form **BP-H13 09-16 – EQUIPMENT BREAKDOWN COVERAGE ENDORSEMENT**, which states, in pertinent part, as follows:

\*\*\*

**A. Coverage**

We will pay for direct physical loss of or damage to Covered Property at the “premises” described in the Declarations caused by or resulting from Equipment Breakdown.

**1. Equipment Breakdown means the following:**

**a. Physical loss or damage, both originating within:**

\*\*\*

(2) All mechanical, electrical, electronic or fiber optic equipment.

**b. Caused by, resulting from, or consisting of:**

(1) Mechanical breakdown;

(2) Electrical or electronic breakdown;

(3) Rupture, bursting, bulging, implosion, or steam explosion;  
or

(4) Artificially generated electrical current, including electrical arcing, that disturbs electrical devices, appliances, or wires.

**2. However, Equipment Breakdown does not mean:**

**a. Physical loss or damage caused by or resulting from any of the following:**

\*\*\*



(6) Any accident, loss, damage, cost, claim, or expense, whether preventative, remedial, or otherwise, directly or indirectly arising out of or relating to the recognition, interpretation, calculation, comparison, differentiation, sequencing, or processing of data by any computer system including any hardware, programs or software. . . .

However if loss or damage not otherwise excluded results, then we will pay for such resulting damage.

b. Any loss, damage, cost or expense directly caused by, contributed to by, resulting from or arising out of the following Causes of Loss:

Fire, lightning, combustion, explosion, windstorm or hail, weight of snow, ice or sleet, falling objects, smoke, aircraft or vehicles, riot or civil commotion, vandalism, "sinkhole collapse", volcanic action, leakage from fire extinguishing equipment, water damage, earth movement and flood.

#### B. Extensions of Coverage

With respect to the coverage provided by this endorsement, the following extensions are added as part of and not in addition to the limits of insurance:

\*\*\*

#### 4. Spoilage Coverage

We will pay for loss of Perishable Goods due to spoilage resulting from lack of power, light, heat, steam or refrigeration caused by Equipment Breakdown to types of property covered by this policy, that are:

a. Located on or within 1,000 feet of your described "premises";  
and

- b. Owned by the building owner at your described “premises”, or owned by a public utility.

However, we will not pay for any loss, damage, cost or expense directly caused by, contributed to by, resulting from or arising out of the following causes of loss:

Fire, lightning, combustion explosion, windstorm or hail, weight of snow, ice or sleet, falling objects, smoke, aircraft or vehicles, riot or civil commotion, vandalism, “sinkhole collapse”, volcanic action, leakage from fire extinguishing equipment, water damage, earth movement and flood.

**Perishable Goods** means “horticultural stock” preserved and maintained under controlled conditions and susceptible to loss or damage if the controlled conditions change.

The most we will pay for loss or damage under this coverage is \$250,000 unless a higher limit is provided by an endorsement to the property form to which this endorsement is attached. In that case, whichever limit is greater will apply.

\*\*\*

## 7. Service Interruption

Any insurance provided for Business Income or Extra Expense is extended to apply to your loss, damage or expense caused by an Equipment Breakdown to equipment that is owned by a utility, landlord or other supplier with whom you have a contract to supply you with any of the following services: electrical power, waste disposal, air conditioning, refrigeration, heating, natural gas, compressed air, water, steam, internet access, telecommunications

services, wide area networks or data transmission. The equipment must meet the definition of Equipment Breakdown except that it is not Covered Property.

\*\*\*

#### D. Exclusions

With respect to coverage provided by this endorsement, the BP-I form is amended as follows:

##### 1. Standard Causes of Loss

The following is added as a standard Cause of Loss

\*\*\*

15. Equipment Breakdown

2. The following exclusions are deleted from the Exclusions section of BP-1 applicable to the Standard Causes of Loss:

**B.2.a, B.2.b, B.2.c., B.2.e. and B.2.f.**

##### 3. Special Causes of Loss

The following is added as a Special Cause of Loss

\*\*\*

3. Equipment Breakdown.

13. The Policy also utilized coverage form **BP-HA 09-16 –HortAdvantage Property Endorsement**, which states, in pertinent part, as follows:

\*\*\*

#### **Section B. HORTICULTURAL COVERAGE**

##### **1. Container Grown Plants**

**a. Coverage:**

We will pay up to the Business Personal Property limit of Insurance shown on the Declarations for direct physical loss or damage to your “container grown” plants resulting from a Covered Cause of Loss while located on the described “premises”.

\*\*\*

**7. Loss of Heating or Cooling****a. Coverage:**

We will pay up to the Loss of Heating or Cooling Limit of Insurance shown on the Declarations for direct physical loss or damage to your “Horticultural Stock” caused by a change in temperature or humidity that results from the loss of heating or cooling at a “premise” as described on the Declarations.

**b. Additional Conditions:**

(1) The loss of heating or cooling must be caused by:

(a) The mechanical or electrical breakdown of a heating or cooling unit, including controls and equipment directly related thereto that is permanently installed in Real Property; or

(b) A power outage beyond your control.

(2) You must use reasonable care to maintain all heating and cooling units, including controls and equipment directly related thereto, in proper operating condition.

\*\*\*

**e. Amendment to Covered Cause of Loss:**

Covered Cause of Loss is amended for this Coverage Provision as follows:

Form BP-I Part II Standard Causes of Loss **B. Exclusions 2.f.** does not apply to this Coverage Provision.

\*\*\*

**Section G. SUPPLEMENTAL COVERAGE**

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**13. Utility Services – Direct Damage**

**a. Coverage:**

We will pay up to the Utility Service —Direct Damage Limit of Insurance shown on the Declarations for direct physical loss and damage to Covered Property resulting from the interruption of Utility Service(s) caused by a Covered Cause of Loss.

**b. Additional Definitions:**

Definitions as used in this Coverage Provision include the following:

**Utility Services** includes:

\*\*\*

**(3) Power Supply Services:**

meaning the following types of property not located on the described “premise” and are supplying electricity, steam or gas to the described “premise” immediately prior to the interruption:

**(a)** Utility generating plants;

**(b)** Switching stations;

(c) Substations;

(d) Transformers; and

(e) Transmission lines.

**Transmission lines** include all lines (including overhead) which serve to transmit communication service or power, including lines which may be identified as distribution lines.

**c. Amendment to Covered Cause of Loss:**

Form BP-I, Part II **B. Exclusions 1.e. Utility Services** does not apply to this Coverage Provision.

\*\*\*

14. The Policy also utilized coverage form **BP-I 09-16**, which states, in pertinent part, as follows:

**SECTION I – BUSINESS PROPERTY INSURANCE**

**REAL PROPERTY AND BUSINESS PERSONAL PROPERTY**

**COVERAGE**

**STANDARD and SPECIAL CAUSES OF LOSS**

**GLOSSARY OF TERMS**

\*\*\*

**PART I. REAL PROPERTY AND BUSINESS PERSONAL PROPERTY  
COVERAGE**

**A. Coverage**

We will pay for direct physical loss of or damage to Covered Property at the “premises” described in the Declarations caused by or resulting from any Covered Cause of Loss.

**1. Covered Property**

Covered Property, as used in this Coverage Part, means the type of property described in this Section, A.1., and limited in A.2, Property Not Covered, if a Limit Of Insurance is shown in the Declarations for that type of property.

\*\*\*

**b. Your Business Personal Property** consists of the following property located in or on the Real Property described in the Declarations or in the “open” (or in a vehicle) within 1000 feet of the described “premise(s)” as shown in the Declarations.

\*\*\*

(4) Merchandise, including “horticultural stock”, held in storage or for sale, raw materials and in-process or finished goods, including supplies used in their packing or shipping;

\*\*\*

(6) Soil and growing media whether bagged, mixed, in a pile or in a “container”;

(7) Seeds, bulbs, cuttings, blooms and harvested nursery sod while being stored or displayed for sale;

\*\*\*

**3. Covered Causes of Loss**

See applicable Causes Of Loss form as shown in the Declarations.

**B. Exclusions And Limitations**

See applicable Causes Of Loss form as shown in the Declarations

**C. Limits Of Insurance**

The most we will pay for loss or damage in any one occurrence unless stated otherwise is the applicable Limit Of Insurance shown in the Declarations.

\*\*\*

**PART II. STANDARD CAUSES OF LOSS**

\*\*\*

**B. Exclusions**

1. We will not pay for loss or damage caused directly or indirectly by any of the following. Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss.

\*\*\*

**e. Utility Services**

The failure of power, communication, water or other utility service supplied to the described "premise", however caused, if the failure:

- (1) Originates away from the described "premise"; or
- (2) Originates at the described "premise", but only if such failure involves equipment used to supply the utility service to the described "premise" from a source away from the described "premise".

Failure of any utility service includes lack of sufficient capacity and reduction in supply.



1 Loss or damage caused by a surge of power is also excluded, if  
2 the surge would not have occurred but for an event causing a  
3 failure of power.

4 But if the failure or surge of power, or the failure of  
5 communication, water or other utility service, results in a  
6 Covered Cause of Loss, we will pay for the loss or damage  
7 caused by that Covered Cause of Loss.

8 This exclusion does not apply to the extent that coverage is  
9 provided by Section **G.13.** of form BP-HA.

10 \*\*\*

11  
12 2. We will not pay for loss or damage caused by or resulting from:

13 a. Artificially generated electrical, magnetic or electromagnetic  
14 energy that damages, disturbs, disrupts or otherwise interferes  
15 with any:

- 16 (1) Electrical or electronic wire, device, appliance, system or  
17 network; or  
18  
19 (2) Device, appliance, system or network utilizing cellular or  
20 satellite technology.

21 For the purpose of this exclusion, electrical, magnetic or  
22 electromagnetic energy includes but is not limited to:

- 23 (a) Electrical current, including arcing;  
24  
25 (b) Voltage lower than required;  
26  
27 (c) Electrical charge produced or conducted by a  
28 magnetic or electromagnetic field.  
(d) Pulse of electromagnetic energy; or

(e) Electromagnetic waves or microwaves.

But if fire results, we will pay for the loss or damage caused by that fire.

\*\*\*

d. Neglect of an insured to use all reasonable means to save and preserve property from further damage at and after the time of loss.

e. Mechanical failure or breakdown or the proper functioning of a safety device. This exclusion does not apply to the extent that coverage is provided by Sections **B.7** and **B.8.** of form **BP-HA.**

\*\*\*

### **PART III. SPECIAL CAUSES OF LOSS**

#### **A. Covered Causes Of Loss**

When Special is shown in the Declarations, we insure against loss directly caused by:

1. The Standard Covered Causes of Loss included in Section **A. of Part II.** of this policy.
2. Other risks of direct physical loss unless excluded or limited.

#### **B. Exclusions and Limitations**

Insurance does not apply to loss, damage, or expense caused by, or resulting from the following:

1. All of Section **B.** Exclusions of **Part II.** of this policy.

\*\*\*

4. Additional Causes of Loss or Damage Not Insured:

1 \*\*\*

2 g. The following causes of loss to personal property:

- 3 (1) Dampness or dryness of atmosphere;
- 4 (2) Changes in or extremes of temperature. . . .

5 \*\*\*

6 But if an excluded cause of loss that is listed in **B.4.a.** through

7 **B.4.g.** above results in a Specified Cause of Loss or building

8 glass breakage, we will pay for the loss or damage caused by that

9 Specified Cause of Loss or building glass breakage.

10 h. We will not pay for loss or damage caused by or resulting from

11 any of the following. But if loss or damage by a Covered Cause

12 of Loss results, we will pay for that resulting loss or damage.

13 (1) Weather conditions. But this exclusion only applies if

14 weather conditions contribute in any way with a cause or

15 event excluded in paragraphs **B.1** through **B.4** above to

16 produce the loss or damage....

17 (2) Acts or decisions, including the failure to act or decide, of

18 any person, group, organization or governmental body.

19 (3) Faulty, inadequate or defective

20 \*\*\*

21 (b) Design, specifications, workmanship, repair,

22 construction, renovation, remodeling, grading or

23 compaction;

24 \*\*\*

of part or all of any Property on or off the described  
“premise”.

\*\*\*

#### PART IV. GLOSSARY OF TERMS

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7. “Containers” include trays (undivided containers with multiple plants), flats (trays with built-in cells), peat pots, plastic pots, tubs and growing benches used to grow or hold one or more plants. Containers are used to prevent the growth of roots beyond its side walls or bottom. Containers also include reservoirs for hydroponic plants. These reservoirs may be built of plastic, concrete, glass, metal, vegetable solids or wood. Containers such as in-ground fabric grow bags that allow plants to root into the ground do not qualify as “containers”.

8. “Container Grown” plants are grown in “containers” either above ground or placed in the ground [directly or when placed in another pot in the ground (pot-in-pot)]. “Container grown” plants may be growing, stored, being hardened or displayed for sale.

“Container grown” plants must be located within 1000 feet of the described “premise” or within Real Property. Any plants located within Real Property are considered to be “container grown” even if their bare roots are planted directly into the ground without the use of a “container”.

“Container grown” also includes:

- Balled and burlapped plants with root ball above or below the surface of the ground while displayed for sale,
- Hydroponic grown plants;
- Heeled-in bare root plants whip displayed for sale.

1 Heeled-in bare root plants not displayed for sale and temporarily stored in the  
 2 “open” until conditions are suitable to replant for additional growth are  
 3 considered to be “field grown”.

4 \*\*\*

5  
 6 **15.** “Greenhouse(s)” means structures constructed with roof coverings of light  
 7 transmitting materials designed primarily for production of “container grown”  
 8 plants. “Greenhouse(s)” include building service equipment and fixtures  
 9 permanently installed and contained therein.

10 **16.** “Horticultural Stock” means “container grown” plants typically cultivated in  
 11 nurseries or garden centers to be marketed to the retail, wholesale and landscape  
 12 trade for use in gardening, landscaping and floristry.

13 Examples of Horticultural Stock include “container grown”:

- 14 • Ornamental Plants such as flowers and interior foliage plants;
- 15 • “Nursery Stock”;
- 16 • “Stock Mother Plants”;
- 17 • Edible plants such as vegetables, fruit, herbs and nuts; or
- 18 • Perishable plants that are maintained under controlled conditions for its  
 19 preservation and susceptible to loss or damage if the controlled conditions  
 20 change.  
 21

22 **Horticultural Stock does not include:**

- 23 • “Field grown” plants;
- 24 • “Breeder Mother Plants”;
- 25 • “Outdoor Property”;
- 26 • Field crops such as corn, soybean, hay, wheat, sorghum and rice.  
 27  
 28

1 \*\*\*

2 22. "Nursery Stock" includes bedding plants, woody and herbaceous plants,  
3 groundcovers, vines, deciduous shrubs, grasses, shade and flowering trees,  
4 coniferous evergreens, broadleaf evergreens and Christmas trees. Also included  
5 are fruit and nut trees used to establish orchards. Nursery Stock may include  
6 plants which have been propagated, lined out and grown to promote growth and  
7 root development to enable full recovery after transplanting.

8 \*\*\*

9 **C. The Subject Loss**

10 15. Defendant Floricultura operates greenhouses located at 25425 Esperanza Road, in  
11 which it grows orchids for sale.

12 16. On April 29, 2018, a third-party car struck a PG&E power pole, causing a power  
13 outage at the insured's premises beginning at 11:39 a.m. The outage lasted for between three  
14 and four hours.

15 17. At approximately 12:40 p.m., it was observed that the temperature was beginning  
16 to rise and the IPC was not closing the screens and opening the vents as it should. The insured's  
17 staff manually closed the screens and left the premises, believing the situation to be under  
18 control.

19 18. Over three hours later, the insured's owner returned to the premises and  
20 discovered that the temperature in the greenhouse was extreme. The IPC may have re-opened  
21 the screens.

22 19. Unbeknownst to the insured, a voltage transient resulting from the PG&E  
23 equipment failure had caused the IPC's internal clock to reset itself to 12:00 a.m., on January 1,  
24 2001. This caused the IPC to function as if it were night instead of day, and the greenhouses  
25 overheated. In turn, this destroyed a significant portion of Floricultura's orchid crop ("Subject  
26 Loss"). At the time, all of the orchids were only a portion of the way through their full growing  
27 cycle.  
28

D. **Florist Mutuals' Investigation as to Whether the Efficient Proximate Cause of the Loss was Covered**

20. Florists' Mutual hired Dave Bosko of EDT Engineers to determine the cause of the loss. After conducting a series of inspections and tests, Mr. Bosko determined that the cause of the loss was a voltage transient (*i.e.*, power surge) that occurred as a result of the vehicle striking the PG&E power pole on April 29, 2018. The power surge caused the IPC's internal clock to reset to the wrong date and time, which in turn caused the IPC to function as if it were night instead of day. This caused the greenhouse to reach levels of heat that destroyed a portion of the orchids.

21. Florists' Mutual determined that the only coverage for utility service was the \$25,000 supplemental coverage available for Utility Service—Direct Damage (BP-HA 09-16, G.13), except under the Equipment Breakdown form (BP-H13 09-16, 4.).

22. Florists' Mutual further determined that the basic coverage form entitled **HortAdvantage Property Endorsement** (BP-HA 09-16) did not apply (except for the supplemental coverage afforded for Utility Service—Direct Damage (BP-HA 09-16, G.13) as set forth above, because there was no Covered Cause of Loss. The **HortAdvantage Property Endorsement** incorporates the provisions of **SECTION I—BUSINESS PROPERTY INSURANCE** (BP-I 09-16), which in turn contains the following exclusions: Utility Services, including losses caused by a power surge, except to the extent coverage is provided by Section G.13 of form BP-HA (BP-I 09-16, II.B.1.e); Artificially generated electrical energy, including electrical current (BP-I 09-16, II.B.2.a.); Mechanical breakdown (BP-I 09-16, II.B.2.c); Neglect of an insured to all reasonable means to save and preserve property from further damage at and after the time of the loss (BP-1 09-16, II.B.2.d.); Mechanical failure of a breakdown or the proper functioning of a safety device, except to the extent coverage is provided by sections B.7. and B.8 of form BP-HA (BP-1 09-16, II.B.2.e.); Acts or decisions including the failure to act or decide, of any person, group, organization or governmental body (BP-1 09-16, III.B.4.h.(2)); Faulty, inadequate, or defective design, specifications, workmanship, repair, construction, renovation, remodeling, grading or compaction of part or all of any Property on or off the

described “Premise.” (BP-1 09-16, III.B.4.h(3)).

23. In addition, Florists’ Mutual determined that the **Equipment Breakdown Coverage Endorsement** (BP-H13 09-16), for which Mutual Boiler Re (“MBRe”) was the reinsurer, contained an exclusion for losses caused by, *inter alia*, a vehicle (BP-H13 09-16, A.2.b.). However, Florists Mutual determined that this exclusion did not preclude coverage to the extent the vehicle was not the efficient proximate cause of the loss.

24. Florists’ Mutual determined that **SECTION I – BUSINESS PROPERTY INSURANCE** (BP-I 09-16) did not apply to the extent it did not involve a Covered Cause of Loss due to the following applicable exclusions, *inter alia*: Utility Services, including losses caused by a power surge, except to the extent coverage is provided by Section G.13 of form BP-HA (BP-I 09-16, II.B.1.e.); Artificially generated electrical energy, including electrical current (BP-I 09-16, II.B.2.a.); Mechanical breakdown (BP-I 09-16, II.B.2.c); Neglect of an insured to all reasonable means to save and preserve property from further damage at and after the time of the loss (BP-1 09-16, II.B.2.d.); Mechanical failure of a breakdown or the proper functioning of a safety device, except to the extent coverage is provided by sections B.7. and B.8 of form BP-HA (BP-1 09-16, II.B.2.e.); Acts or decisions including the failure to act or decide, of any person, group, organization or governmental body (BP-1 09-16, III.B.4.h.(2)); Faulty, inadequate, or defective design, specifications, workmanship, repair, construction, renovation, remodeling, grading or compaction of part or all of any Property on or off the described “Premise.” (BP-1 09-16, III.B.4.h(3)).

25. Florists’ Mutual determined that there was no coverage for business income and extra expense as set forth in, without limitation, **BP-BI 09-16 Business Income (And Extra Expense) Coverage Form**, **BP-ALS 09-16 Business Income – Actual Loss Sustained**, and **BP-BIE 09-16 HortAdvantage Business Income Enhancement** due to the lack of any “suspension” of Floricultura’s “operations” or any “period of restoration” as required for such coverage (because the insured’s orchid growing operations continued). Nevertheless, Florists’ Mutual is in the process of paying \$25,000 under **BP-BIE 09-16 HortAdvantage Business Income Enhancement, 9. Utility Services – Time Element Coverage** as an Extra Expense for



1 the cleanup and debris removal associated with the destroyed orchids.

2 **E. Florist Mutual's Coverage Position Letters and Payments**

3 26. On or about May 2, 2018, Florists' Mutual sent Floricultura a letter  
4 acknowledging the loss and reserving rights based on, *inter alia*, the requirement of a Covered  
5 Cause of Loss. It indicated it was investigating the loss under a reservation of rights. Florists  
6 Mutual continued to provide Floricultura with periodic updates as to the status of the  
7 investigation through late 2018.

8 27. Florists' Mutual, through its coverage counsel Selman Breitman LLP, sent  
9 Floricultura a coverage position letter on or about December 26, 2018. The letter stated that  
10 based on a lack of covered loss and the exclusion for artificially generated energy and failure of  
11 a power or utility service, there was no coverage under the Real Property and Business Personal  
12 Property Coverage, Standard and Special Causes of Loss form (BP-1 09-16). In addition, there  
13 was no Horticultural Coverage for Container-Grown Plants or Greenhouse Utility Services—  
14 Direct Damages (BP-HA 09-16, B.1.) due to the exclusion for artificially generated energy.  
15 However, there was coverage for Loss of Heating or Cooling (BP-HA 09-16, B.7.) (with a limit  
16 of \$5,000) and Utility Service—Direct Damage (BA-HA 09-16, G.13.) (with a limit of  
17 \$25,000), for combined applicable limit of \$30,000. The letter indicated that there was no  
18 Business Income/Extra Expense Coverage (BP-BI 09-16) because there was no suspension of  
19 the insured's operations. Following the issuance of the December 26, 2018, Florists Mutual  
20 paid the combined limits of the Utility Service—Direct Damage and Loss or Heating or Cooling  
21 coverages in the amount of \$30,000. The letter indicated possible coverage for Equipment  
22 Breakdown would be addressed in a separate letter.

23 28. On February 1, 2019, Florists' Mutual, through its coverage counsel, sent a  
24 further coverage position letter to the insured stating that coverage was available under the  
25 Equipment Breakdown Coverage Endorsement's "Spoilage Coverage" (BP-H13 09-16, 4.) up to  
26 the applicable limit of \$250,000. Florists' Mutual further stated that MBRe was the reinsurer  
27 responsible for Equipment Breakdown coverage, although it was denying there was any  
28 Equipment Breakdown loss (MBRe has since paid the \$250,000.)

29. Florists' Mutual later determined that it would pay, and is in the process of paying, an additional \$25,000 in Extra Expense under BP-BIE 09-16 HortAdvantage Business Income Enhancement, 9. Utility Services – Time Element Coverage for the cleanup and debris removal associated with the destroyed orchids, although there was no suspension of operations or period of restoration as required for Business Income or Extra Expense coverage under the Policy.

30. It is Florists' Mutual's position that it has paid, or is in the process of paying, all amounts due under the subject Policy, and does not owe any further amounts. Florists' Mutual is informed and believes and thereupon alleges that Floricultura disputes this contention, and contends that it is entitled to additional coverage under the Policy, such that an actual controversy has arisen.

#### **CAUSE OF ACTION FOR DECLARATORY RELIEF**

31. Florists' Mutual Insurance Company hereby incorporates by reference all preceding paragraphs into this cause of action as if fully set forth herein.

32. Florists' Mutual contends that it has exhausted its coverage obligation under the Policy by making the appropriate payments under all applicable provisions as set forth herein.

33. On information and belief, Floricultura contends that further amounts are owed under the policy.

34. An actual controversy has arisen as to whether and/or what extent further coverage is owed under the Policy. Florists' Mutual thus seeks a judicial declaration of the respective rights and/or duties of the parties.

**PRAYER FOR RELIEF**

Plaintiff prays for judgment against Defendants as follows:

1. For a judicial declaration that Florists' Mutual has paid in full all amounts owed under the subject Policy, and that no further coverage is owed.
2. For an award of Florists' Mutual Insurance's costs pursuant to law; and
3. For such other relief as the Court may deem just and proper.

DATED: September 16, 2019

SELMAN BREITMAN LLP

By: /s/RACHEL E. HOBBS

ALAN B. YUTER

RACHEL E. HOBBS

Attorneys for Plaintiff

FLORISTS' MUTUAL INSURANCE  
COMPANY

Selman Breitman LLP  
ATTORNEYS AT LAW